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Cases, Regulations and Statutes

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FOOTNOTES

[1] Est. of Moss v. Comm'r, 74 T.C. 1239 (1980), *acq.*, 1981-1 C.B. 2.
[2] See Harl, "Self-Cancelling Installment Notes," 1 *Agric. L. Dig.* 137 (1990).
[3] 1986-1 C.B. 253.
[4] *Id.*
[5] Est. of Bell v. Comm'r, 60 T.C. 469 (1973); 212 Corp. v. Comm'r, 70 T.C. 788 (1978).
[6] 98 T.C. No. 26 (1992).
[7] See I.R.C. § 453B.
[8] I.R.C. § 453B(a), (f).
[9] I.R.C. § 453B(f)(2).
[10] I.R.C. § 453B(a),(f)(1).
[11] Ltr. Rul. 8739045, June 30, 1987.
[12] 98 T.C. No. 26 (1992)
[13] *Id.*
[14] I.R.C. § 453B(f).
[15] See I.R.C. § 453B(f)(2).
[16] 98 T.C. No. 26 (1992).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL

AVOIDABLE LIENS. The debtor sought to avoid a consensual nonpurchase money security interest in fishing rods, sleeping bags, tents, tools and a camera as household goods. The court held that the lien was not avoidable because the items were not household goods. ***In re* Wheeler, 140 B.R. 445 (Bankr. N.D. Ohio 1992)**.

The debtor sought to avoid a consensual nonpurchase money security interest in two television sets, various tools, a VCR, and videotapes as household goods. The court held that only one television set, the VCR and the tapes were household goods against which the lien could be avoided. ***In re* Brubaker, 140 B.R 460 (Bankr. N.D. Ohio 1992)**.

EXEMPTIONS.

CONVERSION. The debtor had filed a Chapter 13 case in which the plan was confirmed. The debtor had claimed, as exempt, interests in two IRA's. The debtor converted the case to Chapter 7 and the trustee objected to the exemptions for the interests in the IRA's, arguing that a recent state case had declared the exemptions unconstitutional prior to the conversion. The court held that the debtor was not entitled to the exemptions because as of the date of the conversion, the exemptions were not allowed. ***In re* Marcus, 140 B.R. 803 (D. Colo. 1992), *aff'g*, 128 B.R. 294 (Bankr. D. Colo. 1991)**.

PENSION PLANS. Prior to filing for bankruptcy, the debtor elected to receive a lump sum payment from an ERISA qualified pension and profit-sharing plan. The distribution was made by cashier's check made out to the debtor's attorney. The checks were not cashed but a judgment lien holder sought to attach the lien to the checks. The debtor claimed the checks as exempt pension plan funds. The court held that because the checks were cashier's checks, the funds were no longer part of the pension plan and were no longer exempt. The debtor also argued that because the bankruptcy case was filed before the period allowed for rollover of the funds to an IRA, the funds remained exempt. The court held that the rollover period applied only as to the federal tax liability of the debtor and did not affect the exempt status of the funds. ***In re* Toone, 140 B.R. 605 (Bankr. D. Mass. 1992)**.

WAGES. The debtor operated a grain hauling business and hauled grain for two companies as an independent contractor. The debtor claimed payments from these companies as exempt wages under Iowa Code § 627.6(9)(c). The court held that because the payments were received for services performed by the debtor, the payments were exempt as wages. **Matter of Sexton, 140 B.R. 742 (Bankr. S.D. Iowa 1992)**.

CHAPTER 12

AUTOMATIC STAY. The debtor was the executrix of the deceased spouse's estate. The deceased spouse's parent, a creditor of the debtor and the deceased spouse's estate, filed a petition in the probate case seeking to remove the debtor as executrix. The court held that the probate petition violated the automatic stay under Section 362(a)(1) and could be enjoined. ***In re* Panayotoff, 140 B.R. 509 (Bankr. D. Minn. 1992)**.

NOTICE TO CREDITORS. The FmHA filed a proof of claim in the debtor's Chapter 12 case and requested that notices be sent to the state office. The debtors sent notice of their proposed plan and confirmation hearing to the state office of the United States Attorney and the FmHA national office. The FmHA did not appear at the confirmation hearing and argued that sufficient notice was not sent. The court held that the notice was not sufficient and ordered a new confirmation hearing. ***In re* Miller, 140 B.R. 499 (Bankr. E.D. Ark. 1992)**.

CHAPTER 13

PLAN. The debtor's Chapter 13 plan provided that the mortgage against their residence would be divided into a secured portion, to the extent of the fair market value of the house, and an unsecured portion for the remainder. The mortgagee argued that Section 1322(b)(2) prohibited modification of liens secured solely by the debtors' residence. The court held that Section 1322(b)(2) applied

only to the secured portion of the lien and allowed bifurcation of the mortgage into secured and unsecured liens. ***In re* Bellamy, 962 F.2d 176 (2d Cir. 1992), *aff'g*, 132 B.R. 810 (D. Conn. 1991), *aff'g*, 122 B.R. 856 (Bankr. D. Conn. 1991)**.

FEDERAL TAXATION

ALLOCATION OF PLAN PAYMENTS FOR TAXES. The court held that Chapter 11 plan payments of taxes were involuntary and the IRS was not required to allocate such payments as directed by the debtor. ***In re* Fullmer, 962 F.2d 1463 (10th Cir. 1992)**.

AVOIDABLE LIENS. The IRS filed a tax lien against the debtor's interest in a trust. Under the trust, the trustee had complete discretion in distribution of trust income to the debtor and made no distributions while the debtor was in bankruptcy. The IRS argued that the debtor's right to compel distributions if the trustee abuses the discretion was a property right to which the tax lien could attach. In addition, the IRS argued that its lien made it a co-owner of the debtor's interest in the trust, giving the IRS the right to future distributions and the right to compel distributions. The court held that under state law, the trust was a valid spendthrift trust and the trustee could not be compelled to make distributions where no trustee fraud or misconduct was shown. ***In re* Wilson, 140 B.R. 400 (Bankr. N.D. Tex. 1992)**.

CLAIMS. The Chapter 7 debtor sold the homestead and placed the exempt proceeds in a trust account for possible payment of federal tax claims if the bankruptcy estate did not have sufficient funds to pay the tax claims. The IRS levied against the account after the debtor's discharge, although sufficient bankruptcy estate funds were available to pay the claims. The debtor sought payment of the tax claim by the trustee so that the debtor could obtain a refund of the levied exempt funds. The court held that equity required the trustee to pay the claims and ordered the IRS to pay the refund once the trustee paid the IRS. ***In re* O'Neil, 140 B.R. 263 (N.D. Cal. 1992)**.

DISCHARGE. The IRS filed a claim for the 100 percent tax penalty, under I.R.C. § 6672, against the debtor as a responsible person in a corporation which failed to pay employment withholding taxes. The court held that although the statute referred to the tax as a penalty, the liability was actually a tax and was nondischargeable because the return for the taxes was not filed until after the bankruptcy case was filed. ***In re* Hardin, 140 B.R. 158 (Bankr. E.D. Ky. 1992)**.

The debtor filed late income tax returns in satisfaction of a criminal judgment for failure to file income tax returns, but the debtor added statements at the end of the jurat clause that the returns were signed under duress. The court held that the tax liability for those returns was not dischargeable because the alteration of the jurat clause voided the tax returns such that no returns were deemed to have been filed. ***In re* Schmitt, 140 B.R. 571 (Bankr. W.D. Okla. 1992)**.

The IRS assessed the debtor for 1982 through 1986 taxes on April 11, 1990. The debtor then filed for Chapter 13 bankruptcy, which was dismissed on February 20, 1991. The debtor refiled for Chapter 13 on April 11, 1991, more than 240 days after the assessment, and sought a determination that the taxes were dischargeable under Section 523(a)(1)(A). The court held that the 240 day rule was tolled by the filing of the first Chapter 13 case plus six months after the case was dismissed. ***In re* Richards, 92-2 U.S. Tax Cas. (CCH) ¶ 50,330 (W.D. Okla. 1992)**.

An involuntary Chapter 7 case was filed against the debtor in 1981. The case was converted to Chapter 11 in 1982 and reconverted to Chapter 7 in 1986. A discharge was granted in 1987. The debtor sought to have taxes for 1978, 1979, and 1980 declared discharged as due more than three years before the date the case was converted to Chapter 11. The court held that the date of the original involuntary petition was the effective date of the petition for purposes of discharge of income taxes under Section 523. ***In re* Rassi, 140 B.R. 490 (Bankr. C.D. Ill. 1992)**.

RESPONSIBLE PERSON. The debtor as an officer and director of a cattle breeding corporation, was a signatory on the corporation's checking accounts, and had the authority to borrow money for the corporation and to hire employees. The debtor's duties, however, involved primarily the management of the cattle breeding operation and the debtor's brother, the sole shareholder, managed the administration of the company, including payment of wages and taxes. The court held that the debtor was not a "responsible person" liable for the 100 percent penalty, under I.R.C. § 6672, for the failure of the corporation to pay withheld employment taxes. ***In re* Taylor, 140 B.R. 294 (Bankr. N.D. Okla. 1992)**.

The IRS sought relief from the automatic stay to offset the debtor's 1990 income tax refund against the debtor's 1987 and 1988 taxes. The debtor's plan was confirmed and provided for 100 percent payment of the 1987 and 1988 taxes over the five years of the plan. The court held that the right to setoff continued after confirmation of the plan and would be allowed. ***In re* Orlinski, 140 B.R. 600 (Bankr. S.D. Ga. 1991)**.

CONTRACTS

DAMAGES. A sunflower seed producer entered into a contract under which a cooperative agreed to purchase all of the producer's sunflower seeds at a set price. The cooperative then entered into a contract to sell at the same price all the producer's sunflower seeds to a third party. The cooperative would receive only a handling charge deducted from the amount to be paid to the producer. After the price of sunflower seeds nearly doubled, the producer sold the seeds to a fourth party in breach of the sales contract with the cooperative. The sole issue was the measure of damages, either (1) the difference in contract and market price at the time of the breach under Kan. Stat. § 84-2-713 or (2) the loss of the cooperative's profits under Kan. Stat. § 84-1-106. The court held that the contract/market price difference would be the measure of damages to encourage an efficient market and to discourage the breach of contacts. **Tongish v. Thomas, 829 P.2d 916 (Kan. App. 1992)**.

INTERPRETATION. The plaintiff leased a grain elevator from the defendant. The lease contained an option for the plaintiff to purchase the "facility" from the defendant; however, the lease also identified other equipment included in the lease/option and the defendant argued that the lease option applied only to the named equipment and the grain storage buildings, excluding all other equipment. The plaintiff argued that the term "facility" included all equipment necessary to operate the grain storage units. In interpreting the contract language, the court held that the use of the term "facility" was ambiguous and construed the meaning of "facility" against the defendant who had chosen the contract language. The court also noted that the defendant had not taken any actions to claim ownership of the disputed equipment until after the dispute arose. **Boswell Grain v. Kentland Elevator, 593 N.E.2d 1224 (Ind. Ct. App. 1992)**.

CORPORATIONS

DIRECTOR LIABILITY. The defendants were husband and wife directors of a grain elevator. The elevator was forced into receivership and eventual bankruptcy when the grain speculation of the husband with grain stored in the elevator resulted in substantial losses with the elevator corporation owing more than 300,000 bushels of gain than it had in storage. The corporation was placed in receivership under Ohio Rev. Code § 926.141 for failing to have sufficient grain to satisfy all obligations. The husband argued that the grain speculation was not a violation of a director's fiduciary duty to the corporation because such decisions are excepted under the business judgment rule. The court held that the business judgment rule does not protect a director as to decisions which violate state law. The wife director argued that she was not in violation of the same director's fiduciary duty because her decision to let the husband manage the business was also protected by the business judgment rule. Again, the court held that the business judgment rule does not protect a director who fails to take steps to prevent another director from violating state law. **Geygan v. Queen City Grain Co., 595 N.E.2d 328 (Ohio Ct. App. 1991)**.

FEDERAL AGRICULTURAL PROGRAMS

BLACK STEM RUST. The APHIS has issued proposed regulations adding several plants of the species Berberis to the list of rust-resistant species to allow their interstate movement without unnecessary restrictions. **57 Fed. Reg. 33905 (July 31, 1992)**.

BRUCELLOSIS. The APHIS has issued an interim regulation changing the designation of Louisiana from a Class B to a Class A state for the purposes of the cattle brucellosis regulations. **57 Fed. Reg. 31429 (July 16, 1992)**.

CONSERVATION. The FmHA has adopted as final amendments to the regulations establishing wetland conservation easements on FmHA inventory property. **57 Fed. Reg. 31636 (July 17, 1992**.

CONTAGIOUS DISEASES ACT. The plaintiff had qualified as a "specifically approved stockyard" under the Contagious Diseases Act, but the status was withdrawn after USDA inspections found violation of sanitation and identification requirements pertaining to cattle. After notice and an informal hearing, the status was withdrawn for five years. The plaintiff appealed the suspension, arguing that the informal hearing process violated USDA regulations, 7 C.F.R. § 1.131 et seq., requiring application of uniform rules of practice. The court held that the uniform practice regulations did not require application of the rules where the USDA had issued regulations for an informal hearing in such cases. The plaintiff also argued that the informal hearing violated the Administrative Procedures Act, but the court disagreed, holding that the APA did not apply unless the statute involved required a formal hearing. The court reviewed the USDA decision using a rational basis standard and held that the findings of violations were supported by the evidence but that the six year suspension was too severe given the plaintiff's improved sanitation and record of misidentification of cattle after the inspections. The suspension was decreased to six months. **Moore v. Madigan, 789 F. Supp. 1479 (W.D. Mo. 1992)**.

COTTON. The CCC has issued proposed regulations changing the announcement time of the adjusted world price and coarse count adjustment for upland cotton from 4 to 5 p.m. EST each Thursday. The proposed regulations also change the time for acceptance of payments on price support loans and applications for loan deficiency payments. **57 Fed. Reg. 32454 (July 22, 1992)**.

JURISDICTION. The debtor borrowed money from the FmHA for the debtor's farm but was later denied additional credit. The debtor also entered into a contract with the SCS under the Great Plains Conservation Program but the payments under that program were delayed over two years. The debtor entered into a contract with the CCC for set-aside acres, under which the debtor was to control the weeds on the fallow acres. The CCC contract was terminated because the debtor was unable to control the weeds because of lack of funds because of the delay in payments from SCS. The debtor sued all three agencies under the Federal Tort Claims Act for tortious breach of the covenant of good faith and fair dealing. The court held that jurisdiction in the federal bankruptcy or district courts was lacking because, under Montana law, an action in tort for breach of the covenant of good faith and fair dealing required a nonprofit motive for entering into the contract; therefore, the debtor's action could only be for breach of contract which was not covered by the FTCA. **Winchell v. USDA, 961 F.2d 1442 (9th Cir. 1992), *aff'g*, 790 F. Supp. 214 (D. Mont. 1990)**.

MILK. The CCC has adopted as final amendments to the milk price support regulations to limit, retroactive to January 1, 1991, the scope of the program to milk produced within all states except Hawaii and Alaska. **57 Fed. Reg. 30897 (July 13, 1992)**.

PRODUCTION ADJUSTMENT PROGRAMS. The CCC has issued proposed regulations for establishing the acreage reduction percentage for 1993 feed grain crops. **57 Fed. Reg. 34087 (Aug. 3, 1992)**.

RICE. The CCC has issued proposed regulations changing the announcement time of the adjusted world price for rice and changing the dates for loan repayments, repayment lock-ins and applications for loan deficiency payments. **57 Fed. Reg. 32454 (July 22, 1992)**.

SHEEP. The APHIS has adopted as final regulations establishing a voluntary scrapie sheep and goat flock certification program. **57 Fed. Reg. 33625 (July 30, 1992)**.

TUBERCULOSIS. The APHIS has issued an interim regulation changing the designation of New York from an accredited-free to a modified accredited state for the purposes of the cattle tuberculosis regulations. **57 Fed. Reg. 31429 (July 16, 1992)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The IRS has issued a revenue ruling revising *Rev. Rul. 88-81, 1988-2 C.B. 127* and *Rev. Rul. 82-165, 1982-1 C.B. 117*. The new ruling provides correct sample trust language for computing the payments required under Treas. Reg. § 1.664-1(a)(5)(i). The erroneous language of the old ruling indicated that interest should be added in determining the unitrust amount but the correct language does not. **Rev. Rul. 92-57, I.R.B. 1992-29, 4**.

The grantor established a charitable remainder trust with the grantor and spouse as lifetime beneficiaries with a charitable organization as remainder beneficiary. The grantor and spouse were to receive the lesser of trust income or 5 percent of the value of trust assets annually. The trust assets included a life insurance policy on the life of the grantor with premiums to be paid from trust corpus and all amounts received from the policy to be paid into trust corpus. State law did not have any requirements about payment of insurance premiums from trust income or principal. The IRS ruled the grantor would not be treated as the owner of the trust and the trust qualified as a charitable remainder trust. **Ltr. Rul. 9227017, March 31, 1992**.

MARITAL DEDUCTION. The decedent's will provided that the surviving spouse was to receive so much of the estate as was necessary to reduce the federal estate tax to zero. The remainder of the estate passed as the residuary estate, out of which was to be paid all expenses, claims and taxes. The surviving spouse disclaimed a portion of the property which would have passed under the will. The IRS ruled that the amount of property eligible for the marital deduction was the amount of property passing under the original formula clause of the will less the amount of property disclaimed. The IRS ruled that, although the disclaimer would increase the amount of federal taxes to be paid by the residuary estate, the marital deduction amount would not need to be "run-through" the formula again after the disclaimer. **Ltr. Rul. 9227006, March 29, 1992**.

The decedent and spouse had established an intervivos trust funded with community and separate property. Each spouse had the power to revoke the trust with respect to the spouse's share of community property and separate property. The IRS argued, and the court held, that because the trust was silent as to the surviving spouse's power to revoke the trust as to the decedent's share of community property and separate property, the surviving spouse had no power to revoke the trust as to the decedent's share of community and separate property; therefore, that property was not eligible for the marital deduction as passing to the surviving spouse. **Est. of Hedrick, T.C. Memo. 1992-414**.

The decedent's will bequeathed all property in trust to the surviving spouse with the children as remainder holders. The surviving spouse and children agreed not to probate the will and the property passed to the children. The children then disclaimed a portion of the estate so that the property passed on to the surviving spouse. The IRS ruled that the agreement not to probate the will functioned as a qualified disclaimer and that after the qualified disclaimers of the children, the property passing to the spouse was eligible for the marital deduction. **Ltr. Rul. 9228004, March 31, 1992**.

Under the decedent's will, the marital residence passed to the surviving spouse for so long as the surviving spouse resided in the house. The children of the decedent and surviving spouse agreed among themselves that if the surviving spouse should have to move from the residence, the house would be sold and the surviving spouse would receive the value of the life estate in the house. The estate argued that this agreement was in recognition of the surviving spouse's elective share, although no such election was made. The IRS ruled that the surviving spouse's interest in the marital residence was not QTIP because the interest could be divested by an event not in the control of the surviving spouse. The IRS also ruled that the receipt of an unqualified life time interest in the house proceeds through the children's agreement was not a transfer in recognition of the surviving spouse's rights in a will controversy under Treas. Reg. § 20.2056(e)-2(d)(2) because no will controversy was involved at the time the agreement was reached and the surviving spouse had no rights under the elective share rule because no election was made. **Ltr. Rul. 9229004, March 31, 1992**.

SPECIAL USE VALUATION. The House has passed a bill providing that cash rental of special use valued property by a qualified heir to a lineal descendant would not cause recapture of the special use valuation benefits. **H.R. 2735**.

Under the decedent's will, one-sixth of the estate property passed outright to a child with the remaining amount passing to a trust for the other five children. The trustee, a qualified heir, was given the power to sell the farmland in the trust to any child or issue of any child of the decedent for a set price. The estate elected special use valuation of the farm land but the recapture agreement was not signed by the trustee in the capacity of trustee, although

the trustee signed as an individual heir. In addition, the agreement was not signed by the issue of one child who died after the decedent but before the estate tax return was filed, nor was the agreement signed by the issue of one child and some 41 other linear descendants who had the right to purchase the farm land. The IRS ruled that the missing signatures of the trustee and children of the deceased child could be provided in perfection of the election. The signatures of the other 41 descendants would not be required until they purchased the farm land because the right to purchase the farm land was too remote an interest for signatures to be required. In making the election, the estate claimed to use the cash lease comparable method of valuation but provided only one comparable, and that comparable farm was crop share leased. The IRS ruled that the failure to provide correct information of comparable cash leased property was too great an omission to be perfected and ruled that the special use valuation election was ineffective. The IRS also ruled that use of the net crop share method was not allowable because cash rent lease comparables were available. **Ltr. Rul. 9228005, March 31, 1992**.

FEDERAL INCOME TAXATION

COOPERATIVES. A non-stock agricultural cooperative with no capital reserves dealt only on a *de minimis* basis with nonmembers. The IRS ruled that the cooperative was exempt from federal income tax under I.R.C. § 521, conditioned upon several changes in the cooperative's bylaws. The first change was to require distribution of remaining assets upon dissolution on a patronage basis to members and nonmembers alike. The second change was to require that a patron was entitled to a ratable share of residual assets on liquidation. The third change was to require that all patrons share in the net proceeds of the cooperative's business on a patronage basis. **Ltr. Rul. 9229011, April 13, 1992**.

GIFTS. The taxpayers were husband and wife and the husband executed notarized "grain gifting sheets" transferring ownership of soybeans to the wife on condition that the soybeans be sold before the end of the year. The soybeans were already harvested and stored and were sold on the same days the gifting sheets were executed. The soybeans were delivered to the buyer by the husband and the husband had deducted the costs of growing the soybeans in the previous taxable year. The buyer issued the checks in the name of the wife who deposited the checks in a joint bank account, but the buyer listed the husband as the "patron" of the buyer. The husband argued that this was an error by the buyer caused by the husband's delivery of the soybeans to the buyer. The IRS ruled that a valid gift was not made in this case because (1) the husband did not release control over the soybeans as evidenced by the notarized statement's condition that the beans be sold before a specific date; (2) the husband made the gift in return for the wife's companionship and patience; (3) the gift lacked economic substance, given the close family relationship and joint ownership of the farm; and (4) the only purpose of the transaction was to avoid self-employment taxes. The IRS ruled that the proceeds could not be excluded from the husband's self-employment income. **Ltr. Rul. 9229002, Feb. 28, 1992**.

INVOLUNTARY CONVERSION. The House has passed a bill which would provide for use of the income deferral for sales of livestock sold on account of weather related conditions such as hurricane, tornado or flooding. Current law, I.R.C. § 451(d), allows such deferral only in cases of drought. **H.R. 2735**.

SAFE HARBOR INTEREST RATES
AUGUST 1992

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	4.48	4.43	4.41	4.39
110% AFR	4.93	4.87	4.84	4.82
120% AFR	5.39	5.32	5.29	5.26
		Mid-term		
AFR	6.49	6.39	6.34	6.31
110% AFR	7.15	7.03	6.97	6.93
120% AFR	7.82	7.67	7.60	7.55
		Long-term		
AFR	7.55	7.41	7.34	7.30
110% AFR	8.32	8.15	8.07	8.01
120% AFR	9.09	8.89	8.79	8.73

S CORPORATIONS.

TRUSTS. The taxpayer established an irrevocable ten year trust which would own S corporation stock and pay an annual annuity to the grantor. The grantor retained the power, exercisable in a nonfiduciary capacity, to substitute other property of the same value for trust property. The IRS ruled that the issue of whether the grantor held a power of administration in a nonfiduciary capacity was a fact question determinable only after examination of filed returns; therefore, the IRS declined to rule whether the grantor was an owner of the trust and whether the trust was an eligible QSST. **Ltr. Rul. 9227023, April 2, 1992**.

The decedent established a revocable grantor trust which owned stock in three S corporations. The trust provided that at the death of the decedent, the trust was to be divided into two irrevocable trusts with the surviving spouse as beneficiary of one trust. The surviving spouse was to receive all trust income at least quarter-annually and so much of the trust corpus as was necessary for the spouse's health, support and maintenance. The spouse also had a general testamentary power of appointment over trust corpus. The IRS ruled that the original trust remained a QSST during up to two years after the death of the decedent. The trust for the surviving spouse was also ruled a QSST. **Ltr. Rul. 9227037, April 9, 1992**.

The settlor established three trusts, one for each child of the settlor's child. The trusts provided for establishing additional trusts for additional children of the child. The settlor obtained a court amendment of the trusts to eliminate the additional trusts and to provide for annual distribution of trust income. The IRS ruled that the trusts, as amended, were QSST's. **Ltr. Rul. 9228011, April 8, 1992**.

NEGLIGENCE

FENCE. The defendant city had constructed a landfill next to the plaintiff's cow pasture and had constructed a fence around the landfill outside of the plaintiff's fence. The plaintiff claimed that the landfill's maintenance equipment had torn several holes in the plaintiff's fence, allowing cows to escape. The testimony and photographs indicated that some of the holes were caused by fallen tree limbs. The court upheld the trial court's judgment for the defendant because the plaintiff had not produced sufficient evidence to exclude all causes of the holes other than the claimed negligence of the defendant. **Gatti v. City of Shreveport, 599 So.2d 470 (La. Ct. App. 1992)**.

PRODUCTS LIABILITY

FERTILIZER. The plaintiff operated a greenhouse and purchased fertilizer manufactured by the defendant for use on Christmas cactus. The plaintiff sued for avoidance of the purchase contract and in products liability for the loss of the cactus crop caused by the fertilizer. The trial court had found the defendant 30 percent at fault although the trial court did not find the fertilizer defective. The appellate court reversed and entered judgment for the defendant because the evidence demonstrated that the plaintiff's misapplication of the fertilizer and use of an unhealthy growing environment caused the loss of the cactus. **Paulk Bros. Enterprises v. Sierra Chemical Co., 599 So.2d 484 (La. Ct. App. 1992)**.

RIPARIAN RIGHTS

DRAINAGE. The plaintiff sued the defendant for building a dam which restricted precipitation water drainage from the plaintiff's land on to the defendant's land. The court held that the defendant was not liable for any damage to the plaintiff's land under the "common enemy doctrine" involving surface water because the water did not flow through a natural watercourse but only through a natural drainway created by the natural contours of the land. **Millard Farms, Inc. v. Sprock, 829 S.W.2d 1 (Mo. App. 1991)**.

SECURED TRANSACTIONS

CONVERSION. The debtor had granted FmHA a security interest in farm equipment. After the debtor filed for bankruptcy, the equipment was abandoned back to the debtor and the automatic stay was lifted as to the equipment. Two other creditors of the debtor filed state court judgments against the equipment and sought a portion of the proceeds of the auction of the equipment. The contested amount was withheld by the auctioneer until the other creditors obtained a state court judgment awarding them the proceeds. The FmHA was not given notice of amd did not participate in the final state case. The FmHA then sought recovery of the equipment in an action for conversion. The court held that an action for conversion was not allowed because the creditors obtained possession of the proceeds by a lawful state court judgment. **U.S. v. Whedbee, 964 F.2d 330 (4th Cir. 1992)**.

PERFECTION. The debtor, a licensed commodity grain dealer corporation, granted a security interest in corporation property to the plaintiff, a grain mill. The plaintiff filed a financing statement which listed the debtor's name as the name of the corporation president doing business as the corporation. The financing statement was signed by the president but did not indicate that the president was signing in the capacity as president. The financing statement was filed only with the county recorder and the county recorder filed the statement under the name of the president and not the name of the corporation. The court held that the security interest was not perfected because it did not correctly identify the debtor, was not filed under the name of the debtor, and was not filed with the Secretary of State. **Maurer v. Port Feed Mill, Inc., 593 N.E.2d 337 (Ohio Ct. App. 1991)**.

REPOSSESSION. The debtor was delinquent in payments for a skid loader used in a timber cutting business. The secured creditor sent a collector to seek payment of the remaining loan amount and the debtor issued a check based on the amount stated by the collector and wrote on the check "paid in full." The actual amount due was greater and when the debtor refused to pay the additional amount, the collector took the skid loader without the debtor's permission. The debtor claimed that the collector cut a padlock and removed the skid loader from a fenced area. The court held that because the amount due on the loan stated by the collector was a mistake, the "paid in full" notation on the check did not make the payment an accord and satisfaction of the loan amount. In addition, the court held that because a creditor could not use force to repossess the skid loader and an issue of fact remained as to whether the collector cut a padlock and removed the loader from a fenced area, summary judgment for the creditor was improper. **Madden v. Deere Credit Services, Inc., 598 So.2d 860 (Ala. 1992)**.

TRESPASS

FERTILIZER RUNOFF. The plaintiff operated a catfish farm using a ground level man-made pond. The pond received run-off water from the adjacent land on which a fertilizer storage facility was operated by the defendant. After all the fish in the pond died from oxygen depletion in the water, the plaintiff sued the defendant for trespass resulting from run-off of fertilizer. Although the court upheld the rule that such run-off would be actionable trespass, the trial court had substantial evidence to support its ruling that the fish kill was not caused by the run-off of fertilizer from the defendant's facility. **Faulk v. Gold Kist, Inc., 599 So.2d 23 (Ala. 1992)**.

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MADISON, WI 53705-5444

WATER RIGHTS

REASONABLE DILIGENCE. A mutual ditch company sought a determination of reasonable diligence in development of a conditional water right. The court held that the company's efforts to obtain an easement over federal Forest Service lands to allow the water to flow to the irrigated land demonstrated reasonable diligence in development of the conditional water right. The court also held that the company's sale of the water right to the city of Denver did not negate the finding of reasonable diligence. **Public Serv. Co. v. Blue River Irrigation Co., 829 P.2d 1276 (Colo. 1992)**.

CITATION UPDATES

Ferman v. U.S., 790 F. Supp. 656 (E.D. La. 1992) (sale of stock to ESOP), see p. 118 *supra*.

***In re* Gran, 964 F.2d 822 (8th Cir. 1992)** (embryo transplant activity), see p. 118 *supra*.

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